

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

APR 18 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 9
of the Communications Act

Assessment and Collection of
Regulatory Fees for the 1994
Fiscal Year

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)
) MD Docket No. 94-19
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)

GTE's REPLY COMMENTS

GTE Service Corporation and its
affiliated domestic telephone,
equipment and service companies

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April 18, 1994

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SUMMARY

1. GTE supports Sprint's comment stating that "large" user fee determinations should be based on the financial burden imposed on the payer rather than on the size of the fee relative to other fee payers in the same fee category.

2. GTE agrees with COMSAT and GE Americom that the regulatory fees for satellite space stations are excessive in light of the fact that the domestic satellite industry does not require extensive Commission regulation in comparison with other regulated industries.

3. GTE and several other carriers agree that "large" LEC regulatory fee determinations should be based on the total fees owed at the holding company level.

4. GTE agrees with parties that encourage the Commission to select a uniform date for taking the measurements used in calculating regulatory fees. GTE believes that December 31, rather than October 1, should be chosen.

5. GTE agrees with parties that ask the Commission to specify the data that will be used for LEC access line counts. GTE believes that ARMIS 43-01 Report data is the best access line measurement.

6. GTE notes that its comments asking the Commission to take steps to ensure the confidentiality of information used in calculating regulatory fees were supported by both parties addressing the confidentiality issue.

7. GTE notes that every air-ground service provider currently operating supports using the number of mobile transceivers in operation as the surrogate for the number of subscribers for mobile services with no determinable subscriber count.

8. GTE opposes MCI's comment that resellers should pay regulatory fees. GTE argues that the underlying facilities-based service provider should pay the regulatory fees associated with facilities carrying reseller traffic.

9. GTE opposes Allnet's comment that regulatory fees be treated as endogenous costs under price cap regulation. All other parties agree with GTE that regulatory fees satisfy the Commission's test for exogenous cost treatment.

10. GTE opposes Allnet's proposal that would require LECs that provide interexchange service to pay regulatory fees as both a LEC and an interexchange carrier.

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GTE'S REPLY COMMENTS

GTE Service Corporation ("GTE") on behalf of its affiliated domestic telephone, equipment, and service companies, hereby submits its reply to comments filed in response to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("Notice" or "NPRM") in the above-captioned proceeding.¹

INTRODUCTION

On April 7, 1994, GTE filed comments in response to the Commission's NPRM regarding the assessment and collection of regulatory fees for fiscal year 1994. GTE argued that the NPRM should be modified or clarified in several respects. GTE argued that "large" regulatory fee benchmarks should be created for additional classes of regulatory fees, and that the holding company level should be the basis for determining whether local exchange carrier ("LEC")

¹ Implementation of Section 9 of the Communications Act: Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Notice of Proposed Rulemaking, MD Docket No. 94-19, FCC 94-46 (released March 11, 1994).

regulatory fees are large. GTE argued for a uniform measurement date of December 31 for calculating regulatory fees. GTE asked that regulatory fee amounts and supporting information be given confidential treatment, and that payers of such fees be given access to Commission data bases to verify payment receipt.

GTE also argued for changes or clarifications in the manner in which fees are calculated. Specifically, GTE asked that, for mobile services for which a subscriber count is not readily determinable, regulatory fees be based on the number of mobile transceivers operation. GTE argued, further, that the regulatory fees for competitive access providers ("CAPs") and LECs be based on consistent criteria.

GTE asked for several modifications with respect to regulatory fees for facility license holders. GTE asked the Commission to allow licensees to prorate 1994 regulatory fees for facilities that were not in service for the entire year, and to allow refunds of pre-paid regulatory fees for facilities taken out of service during the assessment period. GTE also asked the Commission to allow joint licensees to negotiate the division of regulatory fees.

Finally, GTE argued that regulatory fees should be treated as exogenous costs under price cap regulation.

DISCUSSION

GTE notes, at the outset, that, with one exception, none of the modifications or clarifications sought by GTE were opposed by other commenters in the proceeding. Indeed, several of GTE's suggested

modifications were echoed by a number of commenters. In these reply comments, GTE will note these areas of widespread agreement, and state opposition to the comments made by some parties.

1. GTE endorses Sprint's comments that the large fee determination be based on the financial burden imposed on the payer

In its comments, Sprint asks the Commission to reconsider its means of determining "large" regulatory fee payments. Sprint argues that large regulatory fee determinations should be based on the financial burden the fee imposes on the payer, instead of on whether a payer's fee greatly exceeds the category average. Otherwise, Sprint contends, many fee payers with substantial regulatory fee burdens will not be eligible to make installment payments even though the fees incurred by such payers will be equal to or greater than amounts deemed large in other fee categories. Sprint therefore urges the Commission to adopt a uniform large fee benchmark of \$250,000.²

GTE endorses the Sprint proposal.³ In determining what constitutes a large fee, the Commission stated that its intent was to "adopt a system . . . that is fairly administered, is simple to apply, and enables the Commission to recover its regulatory costs on a timely basis."⁴ While the Commission's proposed rule meets the latter two criteria, it is far from fair. As both parties note, fairness

² Sprint Comments at 3-6.

³ GTE made a similar proposal in its comments, asking the Commission to set large fee benchmarks for categories of rate payers other than those listed in the NPRM at \$250,000.

⁴ NPRM, supra, at ¶ 28.

demands that large fee benchmarks be based on the financial burden imposed rather than on the size of the fee relative to other payers in the fee category. A large fee is a financial burden whether or not the fee is larger than the category average. There is absolutely no reason why a commercial television station in a top ten market with regulatory fees in the amount of \$18,000 should qualify for installment payments while a satellite carrier with a fee burden of \$500,000 should not.

Accordingly, GTE joins Sprint in asking that the Commission change its definition of what constitutes a large fee to state that a large fee is one that imposes a significant financial burden on payers. This definition would be fair to payers, yet would still be simple to apply and ensure that the Commission collects fees on a timely basis. In accordance with this rule, the Commission should state that, at least for categories of payers not mentioned in the NPRM⁵, any regulatory fee in excess of \$250,000 is large.

2. The annual regulatory fees for space stations is excessive

Comsat comments that the \$65,000 annual regulatory fee for space stations operating in geosynchronous orbit is excessive and inconsistent with section 9 of the Communications Act.⁶ Similarly, GE Americom notes in its comments that the regulatory fees for space stations is excessive in light of the fact that the domestic satellite industry does not require extensive regulation

⁵ The NPRM proposed Large fee benchmarks for: VHF and UHF commercial television stations (above \$12,000); cable television systems (above \$18,500); interexchange carriers (above \$500,000) and LEC holding companies (above \$700,000).

⁶ COMSAT Comments at 2-5.

compared to other regulatees.⁷ GTE agrees with COMSAT and GE Americom that the regulatory fees for domestic satellite space stations are excessive, and urges the Commission to reconsider the regulatory fee amounts for satellite facilities.

3. Commenters agree that large fee amounts for LEC regulatory fees should be based on fees at the holding company level

GTE commented that, for purposes of determining whether a LEC's regulatory fees are large, the Commission should consider the aggregate local exchange company fees owed by the holding company. NYNEX and Ameritech made similar comments.⁸ These parties state that the holding company level should be chosen because doing so would reduce the number of payments each company makes and the Commission must process, and would be consistent with the manner in which other data are calculated. Similarly, Southwestern Bell, the only other party addressing this issue, commented that parties should have the option of basing fee assessments at the holding company level. Accordingly, the Commission should find that "large" LEC regulatory fees will be based on assessments made at the holding company level.

4. The Commission should set the uniform measurement date at December 31 for user fee calculations.

In its comments, GTE urged the Commission to set a uniform date for measurements used to calculate regulatory fees. GTE argued that December 31

⁷ GE Americom Comments at 2.

⁸ Ameritech Comments at 2; NYNEX Comments at 5-6.

should be the uniform measurement date. Several parties echoed GTE's call for the Commission to set a measurement date.⁹ Parties are split, however, as to whether the measurement date should be October 1, the beginning of the government's fiscal year, or December 31, the end of the calendar year. Sprint and PCIA argue that regulatory fees should be calculated based on measurements taken at the beginning of the government's fiscal year -- October 1 -- in order to coincide with the period for which the fees apply. NYNEX and CTIA, however, agree with GTE that the measurement date should be December 31 of each year. In addition, several parties argue that LEC subscriber counts should be based on the billable access line count reported in the Automated Reporting and Management Information Systems ("ARMIS") Quarterly report (FCC Report 43-01).¹⁰ This report is based on data counted at the end of each calendar quarter.¹¹

GTE contends, based on these comments, that the Commission must select a date on which regulatory fee measurements are to be made. GTE continues to believe that December 31 is the best date. While an October 1 date would coincide with the time period for which the fees are assessed, there is no reason why the measurement date needs to be set in relation to the

⁹ NYNEX Comments at 5; Cellular Telecommunications Industry Association ("CTIA") Comments at 3; Sprint Comments at 6-7; Personal Communications Industry Association ("PCIA") Comments at 7-8. MCI asks that the Commission clarify how it will measure the multipliers. MCI Comments at 5-6.

¹⁰ NYNEX Comments at 4-5; Southwestern Bell Comments at 7; Ameritech Comments at 1, n.2. See Discussion § 5, infra.

¹¹ See Southwestern Bell Comments at 7, n.19.

government's fiscal year. Most companies operate on a calendar year rather than a fiscal year basis. Moreover, as GTE and other commenters indicated, most reports and data generated by companies are based on year-end data. Thus, in order to take advantage of existing reports and save fee payers the expense of generating new reports, the Commission should set December 31 as the universal measurement date for calculating regulatory fees.

5. The number of access lines used in determining LEC regulatory fees should be based on ARMIS data

Several parties note that the NPRM fails to state how the number of access lines will be determined for the purpose of calculating LEC regulatory fees. Ameritech, NYNEX, and Southwestern Bell ask the Commission to clarify that the access line count should be based upon the total billable access line count reported in ARMIS Quarterly Report 43-01.¹² NECA and MCI, on the other hand, argue that the Commission should clarify that the access line count is the same as the Universal Service Fund ("USF") loop count specified in section 36.611(a)(8) of the Commission's Rules.¹³

GTE agrees that the Commission should specify how the number of access lines should be determined. GTE recommends that the Commission find that the number of access lines is to be based on the total billable access lines reported in ARMIS Report No. 43-01. ARMIS data, like NECA loop count data,

¹² Ameritech Comments at 1, n.2; NYNEX Comments at 4-5; Southwestern Bell Comments at 7.

¹³ NECA Comments at 4, MCI Comments at 5.

is already compiled under Commission rules. Thus, carriers reporting false data can face Commission enforcement action. ARMIS data is preferable to NECA data, however, because total billable access count contained in Report No. 43-01 reflects an accurate measure of access lines. Because the regulatory fee schedule indicates that LEC regulatory fees are to be based on access lines rather than loop count data, the Commission should specify that ARMIS Report 43-01 is the basis for calculating LEC regulatory fees.

6. Parties agree that the Commission must take steps to ensure the confidentiality of user fee information

Noting the sensitive and confidential nature of regulatory fee amounts and the information on which such amounts are based, GTE asked the Commission to modify section 0.457 of the Commission's Rules to provide for withholding such information from routine public inspection. Alternatively, GTE asked that the Commission allow payers of regulatory fees to submit one check for the aggregate fees owed by the payer along with a list of the license or other fees covered by the check.¹⁴

Both of GTE's suggestions were echoed by another commenter. CTIA asked the Commission to shield regulatory fee reports and computations from public disclosure by amending its rules to include such information in a new subsection of Rule § 0.457(d)(1).¹⁵ Similarly, Southwestern Bell asked the Commission to give carriers the option of paying fees at a holding company or

¹⁴ GTE Comments at 5-6.

¹⁵ CTIA Comments at 5-8.

aggregate of market area level. This option, it stated, would allow carriers to protect sensitive information such as the number of subscribers in a particular market area.¹⁶

Given the concurrence of these entities with the proposals put forth by GTE for the protection of sensitive business information, GTE urges the Commission to take steps to protect such information from public disclosure. The Commission should amend § 0.457(d)(1) of its rules to include regulatory fee information, or, at minimum, allow the aggregation of regulatory fees in a manner that will protect sensitive information from disclosure.

7. Parties agree that the term "subscriber" should be defined as the number of mobile transceivers in operation for mobile services for which a subscriber count cannot readily be determined

GTE's comments asked the Commission to clarify the term "subscriber" as it applies to certain mobile services. GTE noted that for some publicly available mobile services -- such as air-ground or rail phone services -- there is no pre-existing relationship between the user and the service provider. For services such as these for which the number of subscribers cannot readily be determined, GTE asked the Commission to clarify that the term "subscriber" should be defined as the number of mobile transceivers in operation.¹⁷ The only other parties addressing the issue, and the only other air-ground providers currently operating, Claircom Communications and In-Flight Phone Corporation, concur

¹⁶ Southwestern Bell Comments at 6.

¹⁷ GTE Comments at 8-9.

with GTE's comments with respect to air-ground services. In light of this unanimous support, GTE urges the Commission to adopt the suggested clarification.

8. Resellers should not pay regulatory fees

MCI comments that the Commission should clarify that resellers of common carrier services must pay regulatory fees. GTE disagrees. GTE believes that requiring resellers to pay regulatory fees will lead to difficulties in determining the measurements on which the fees are based and to charging entities two regulatory fees for providing one service. The regulatory fees for interexchange services are based on the number of presubscribed lines. Resellers, however, do not purchase dedicated facilities when they purchase service from a facilities based carrier. Rather, the lines over which a reseller's traffic is carried are typically shared facilities. Thus, it would be impossible for a reseller to determine a number of presubscribed lines on which to base regulatory fees. Any attempt to require resellers to pay fees based on the number of presubscribed lines would result in double counting of the facilities over which reseller traffic is provided.

In addition, some carriers that are considered resellers of interexchange services already pay regulatory fees based on the primary services they provide. For example, under some circumstances, some cellular carriers are considered resellers of interexchange services by the Commission. These cellular carriers, however, already pay regulatory fees based on their number of subscribers. If the Commission, as MCI suggests, requires resellers to pay regulatory fees,

these cellular carriers could face additional regulatory fees for their resale activities. It is doubtful that the Commission intended for such entities to pay twice.

Allowing resellers to escape the direct regulatory fees will not leave gaps in the Commission's regulatory fee scheme or allow resellers to escape the costs of regulatory fees. For example, in the case of interexchange carriers, by requiring facilities-based carriers to pay regulatory fees for all facilities -- including those used by resellers -- regulatory fees will be assessed and collected for all facilities used in providing interexchange services. Similarly, in the case of mobile services providers, by requiring facilities-based providers to count the subscribers of resellers in their subscriber base, all cellular subscribers will be accounted for and the Commission will avoid the problems associated with assessing regulatory fees on resellers.¹⁸ Even if resellers are not required to pay regulatory fees, they may still share the regulatory fee burden. Facilities-based carriers may pass regulatory fees through to their customers, including resellers, in the form of increased rates for the underlying services.¹⁹

9. Most parties agree that regulatory fees should be treated as exogenous costs under price caps

GTE argued in its comments that regulatory fees should be treated as exogenous costs under price caps. Several carriers joined GTE in calling for

¹⁸ The best way for the facilities-based provider to determine the reseller's subscriber count is to count the number of active cellular telephone numbers.

¹⁹ This argument assumes that facilities based carriers subject to price cap regulation are able to treat regulatory fees as exogenous costs. See Discussion § 9, infra.

exogenous treatment of regulatory fees.²⁰ Several cable entities made similar arguments, asking the Commission to allow such carriers to flow through regulatory fees to their customers.²¹ Only one party, Allnet, opposed exogenous treatment for regulatory fees. They argue that regulatory fees are in essence a tax, and that the Commission has previously denied exogenous treatment to tax changes.²²

Allnet mischaracterizes the nature of regulatory fees. While Allnet is correct in stating that the purpose of regulatory fees is to replace general tax dollars, it is wrong in its assertion that the rationale used to deny exogenous treatment to general tax dollars should apply to regulatory fees. As BellSouth noted in its comments, there is a two-pronged test for determining whether costs should be given exogenous treatment: (1) the establishment of the fee and the amount of the fee is beyond the carriers' control; and (2) the fees have a unique and disproportionate effect upon interstate common carriers.²³ Tax law changes are treated as presumptively endogenous by the Commission because such changes fail the second prong of the test.²⁴ General tax obligations have not

²⁰ Ameritech Comments at 3-4; BellSouth Comments at 1-5; NYNEX Comments at 3-4.

²¹ See, e.g., National Cable Television Association ("NCTA") Comments at 4-5; Joint Comments of Blade Communications, Cablevision Industries, Crown Media, Multivision Cable, Paracable, Providence Journal Company, Sammons Communications, and Star Cable at 2-5.

²² Allnet Comments at 2-3.

²³ BellSouth Comments at 2.

²⁴ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6808 (1990) ("LEC Price Cap Order").

been deemed to have a unique and disproportionate effect on interstate common carriers. Moreover, because of their general application, tax changes are likely to be reflected in the gross national product price index ("GNPPI") portion of the price cap formula.²⁵

Contrary to general taxes, regulatory fees meet both prongs of the exogenous cost test. First, as BellSouth notes, regulatory fees are beyond the control of LECs. The fees are triggered by an Act of Congress, and the fee rate is established in the Schedule of Regulatory Fees. While regulatory fees are based upon the number of LEC access lines, a statistic over which LECs have some measure of control, the Commission has ruled in an analogous situation that fee amounts based on statistics controlled by a number of LEC business decisions are not within control of the carrier.²⁶

Likewise, regulatory fees satisfy the second prong of the exogenous cost test. These fees, unlike taxes, have a unique and disproportionate effect upon interstate common carriers and thus are not likely to be reflected in the GNPPI. Unlike taxes, the payment of regulatory fees is unique to interstate common carriers and, contrary to Allnet's assertions, the payment of regulatory fees is in addition to the tax obligations imposed on all businesses. Indeed, although funds derived from regulatory fees will replace tax dollars used to fund

²⁵ Id.

²⁶ BellSouth Comments at 2-3, citing, Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Second Order on Reconsideration and Fourth Report and Order, CC Docket No. 90-571, FCC 93-463 (released September 29, 1993) at ¶ 18. In that case, the Commission ruled that a contribution based on gross revenues was not within the control of the carrier.

Commission regulatory activities, entities required to pay regulatory fees will not likely see any concomitant decrease in their tax obligations. Thus, the new regulatory fees will only affect interstate common carriers and will not be offset either by a change in the GNPPI or by a tax reduction. Finally, as BellSouth indicates, the Commission has previously treated other utility-specific taxes as exogenous costs.²⁷ For these reasons, GTE urges the Commission to reject Allnet's argument and find that regulatory fees are exogenous costs.

10. GTE opposes Allnet's suggestion that would require a LEC providing interexchange services to pay regulatory fees as both a LEC and an interexchange carrier

Allnet contends that LEC's that operate in both local access and interexchange markets should be required to pay both interexchange and LEC regulatory fees.²⁸ GTE disagrees. GTE, as well as many other LECs, provide interstate intraLATA toll services in certain jurisdictions. Subscribers within these LATAs are effectively "presubscribed" to GTE for the completion of 1+ dialed interstate intraLATA calls. Under Allnet's proposal, GTE, in addition to regulatory fees for its local exchange service, would be required to pay a regulatory fee as an interexchange carrier based on the total number of presubscribed lines in the LATA. These same lines, however, are also counted as access lines for the purpose of assessing the LEC regulatory fee. Thus, Allnet's proposal would

²⁷ BellSouth Comments at 4-5, citing, Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 473, 7 FCC Rcd 1486, 1487 (1992).

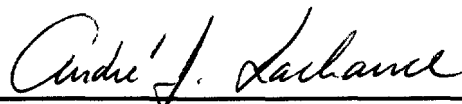
²⁸ See Allnet Comments at 4.

amount to GTE being charged twice for the same line. Accordingly, GTE opposes Allnet's proposal.

In summary, GTE notes that, with one exception, no party filing comments in this proceeding opposed the comments filed by GTE. In these reply comments, GTE notes areas of widespread agreement. In addition GTE opposes comments made by MCI, asking the Commission to apply regulatory fees to resellers; and by Allnet, asking the Commission to: (1) treat regulatory fees as endogenous costs under price caps; and (2) proposing to require LECs that also provide interexchange services to pay regulatory fees as both a LEC and an interexchange carrier.

Respectfully submitted,

GTE Service Corporation and
its affiliated domestic telephone,
equipment, and service companies



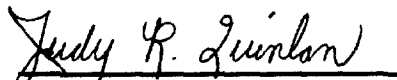
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April 18, 1994

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on the 18th day of April, 1994 to all parties of record:


Judy R. Quinlan